

Terms and Conditions for Purchase Orders - Commercial Items or Services

FAR Clause 52.204-7 Central Contractor Registration (APR 2008) is incorporated herein by reference.

FAR Clause 52.212-4 Contract Terms and Conditions-Commercial Items (OCT 2008) is incorporated herein by reference.

52.212-5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items (OCT 2008)

(a) The Contractor shall comply with the following Federal Acquisition Regulation (FAR) clauses, which are incorporated in this contract by reference, to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

(1) 52.233-3, Protest After Award (Aug 1996) (31 USC 3553).

(2) 52.233-4, Applicable Law for Breach of Contract Claim (Oct 2004) (Pub. L. 108-77, 108-78)

(b) The Contractor shall comply with the FAR clauses in this paragraph (b) that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

[Contracting Officer check as appropriate.]

☒ (1) 52.203-6, Restrictions on Subcontractor Sales to the Government (Sep 2006), with Alternate I (Oct 1995) (41 USC 253g and 10 USC 2402).

☐ (2) 52.219-3, Notice of Total HUBZone Set-Aside (Jan 1999) (15 USC 657a).

☐ (3) 52.219-4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns (Jul 2005) (if the offeror elects to waive the preference, it shall so indicate in its offer) (15 USC 657a).

☐ (4) [Reserved]

☐ (5)(i) 52.219-6, Notice of Total Small Business Set-Aside (June 2003) (15 USC 644). ☐ (ii) Alternate I (Oct 1995) of 52.219-6. ☐ (iii) Alternate II (Mar 2004) of 52.219-6.

☐ (6)(i) 52.219-7, Notice of Partial Small Business Set-Aside (June 2003) (15 USC 644). ☐ (ii) Alternate I (Oct 1995) of 52.219-7. ☐ (iii) Alternate II (Mar 2004) of 52.219-7.

☐ (7) 52.219-8, Utilization of Small Business Concerns (May 2004) (15 USC 637(d)(2) and (3)).

☐ (8)(i) 52.219-9, Small Business Subcontracting Plan (Nov 2007) (15 USC 637(d)(4)). ☐ (ii) Alternate I (Oct 2001) of 52.219-9. ☐ (iii) Alternate II (Oct 2001) of 52.219-9.

☐ (9) 52.219-14, Limitations on Subcontracting (Dec 1996) (15 USC 637(a)(14)).

☐ (10) 52.219-16, Liquidated Damages—Subcontracting Plan (Jan 1999) (15 USC 637(d)(4)(F)(i)).

☐ (11)(i) 52.219-23, Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns (Sept 2005) (10 USC 2323). ☐ (ii) Alternate I (June 2003) of 52.219-23.

☐ (12) 52.219-25, Small Disadvantaged Business Participation Program—Disadvantaged Status and Reporting (Oct 1999) (Pub. L. 103-355, section 7102, and 10 USC 2323).

☐ (13) 52.219-26, Small Disadvantaged Business Participation Program—Incentive Subcontracting (Oct 2000) (Pub. L. 103-355, section 7102, and 10 USC 2323).

☐ (14) 52.219-27, Notice of Total Service-Disabled Veteran-Owned Small Business Set-Aside (May 2004).

☐ (15) 52.219-28, Post-Award Small Business Program Representation (June 2007)

☒ (16) 52.222-3, Convict Labor (June 2003) (E.O. 11755).

☒ (17) 52.222-19, Child Labor—Cooperation with Authorities and Remedies (Aug 2007) (E.O. 13126).

☒ (18) 52.222-21, Prohibition of Segregated Facilities (Feb 1999).

☒ (19) 52.222-26, Equal Opportunity (Mar 2007) (E.O. 11246).

☒ (20) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other

Eligible Veterans (Sept 2006) (38 USC 4212).

☒ (21) 52.222-36, Affirmative Action for Workers with Disabilities (Jun 1998) (29 USC 793).

☐ (22) 52.222-37, Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Sept 2006) (38 USC 4212).

☐ (23) 52.222-39, Notification of Employee Rights Concerning Payment of Union Dues or Fees (Dec 2004)

(E.O. 13201).

- ___ (24)(i) 52.223-9, Estimate of Percentage of Recovered Material Content for EPA-Designated Products (Aug 2000) (42 USC 6962(c)(3)(A)(ii)). ___ (ii) Alternate I (Aug 2000) of 52.223-9
- X (25) 52.225-1, Buy American Act—Supplies (June 2003) (41 USC 10a-10d).
- ___ (26)(i) 52.225-3, Buy American Act—Free Trade Agreements—Israeli Trade Act (Aug 2007) (41 USC 10a-10d, 19 USC 3301 note, 19 USC 2112 note, Pub. L 108-77, 108-78, 108-286, 109-53 and 109-169). ___ (ii) Alternate I (Jan 2004) of 52.225-3. ___ (iii) Alternate II (Jan 2004) of 52.225-3.
- ___ (27) 52.225-5, Trade Agreements (Aug 2007) (19 USC 2501, et seq., 19 USC 3301 note).
- X (28) 52.225-13, Restrictions on Certain Foreign Purchases (Feb 2006) (EO's, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).
- ___ (29) 52.226-4, Notice of Disaster or Emergency Area Set-Aside (Nov 2007) (42 USC 5150).
- ___ (30) 52.226-5, Restrictions on Subcontracting Outside Disaster or Emergency Area (Nov 2007) (42 USC 5150).
- ___ (31) 52.232-29, Terms for Financing of Purchases of Commercial Items (Feb 2002) (41 USC 255(f), 10 USC 2307(f)).
- ___ (32) 52.232-30, Installment Payments for Commercial Items (Oct 1995) (41 USC 255(f), 10 USC 2307(f)).
- ___ (33) 52.232-33, Payment by Electronic Funds Transfer—Central Contractor Registration (Oct 2003) (31 USC 3332).
- X (34) 52.232-34, Payment by Electronic Funds Transfer—Other than Central Contractor Registration (May 1999) (31 USC 3332).
- ___ (35) 52.232-36, Payment by Third Party (May 1999) (31 USC 3332).
- ___ (36) 52.239-1, Privacy or Security Safeguards (Aug 1996) (5 USC 552a).
- ___ (37)(i) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) (46 USC Appx. 1241(b) and 10 USC 2631). ___ (ii) Alternate I (Apr 2003) of 52.247-64.

(c) The Contractor shall comply with the FAR clauses in this paragraph (c), applicable to commercial services, that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

[Contracting Officer check as appropriate.]

- ___ (1) 52.222-41, Service Contract Act of 1965, as Amended (Nov 2007) (41 USC 351, et seq.).
- ___ (2) 52.222-42, Statement of Equivalent Rates for Federal Hires (May 1989) (29 USC 206 and 41 USC 351, et seq.).
- ___ (3) 52.222-43, Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiple Year and Option Contracts) (Nov 2006) (29 USC 206 and 41 USC 351, et seq.).
- ___ (4) 52.222-44, Fair Labor Standards Act and Service Contract Act—Price Adjustment (Feb 2002) (29 USC 206 and 41 USC 351, et seq.).

(d) *Comptroller General Examination of Record.* The Contractor shall comply with the provisions of this paragraph (d) if this contract was awarded using other than sealed bid, is in excess of the simplified acquisition threshold, and does not contain the clause at 52.215-2, Audit and Records—Negotiation.

(1) The Comptroller General of the United States, or an authorized representative of the Comptroller General, shall have access to and right to examine any of the Contractor's directly pertinent records involving transactions related to this contract.

(2) The Contractor shall make available at its offices at all reasonable times the records, materials, and other evidence for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in FAR Subpart 4.7, Contractor Records Retention, of the other clauses of this contract. If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement. Records relating to appeals under the disputes clause or to litigation or the settlement of claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims are finally resolved.

(3) As used in this clause, records include books, documents, accounting procedures and practices, and other data, regardless of type and regardless of form. This does not require the Contractor to create or maintain any record that the Contractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e)(1) Notwithstanding the requirements of the clauses in paragraphs (a), (b), (c), and (d) of this clause, the Contractor is not required to flow down any FAR clause, other than those in paragraphs (i) through (vii) of this paragraph in a subcontract for commercial items. Unless otherwise indicated below, the extent of the flow down shall be as required by the clause—

(i) 52.219-8, Utilization of Small Business Concerns (May 2004) (15 USC 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$550,000 (\$1,000,000 for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

(ii) 52.222-26, Equal Opportunity (Mar 2007) (E.O. 11246).

(iii) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Sept 2006) (38 U.S.C. 4212).

(iv) 52.222-36, Affirmative Action for Workers with Disabilities (June 1998) (29 U.S.C. 793).

(v) 52.222-39, Notification of Employee Rights Concerning Payment of Union Dues or Fees (Dec 2004) (E.O. 13201).

(vi) 52.222-41, Service Contract Act of 1965, as Amended (Nov 2007), flow down required for all subcontracts subject to the Service Contract Act of 1965 (41 U.S.C. 351, et seq.).

(vii) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) (46 U.S.C. Appx. 1241(b) and 10 U.S.C. 2631). Flow down required in accordance with paragraph (d) of FAR clause 52.247-64.

(2) While not required, the contractor may include in its subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

(End of clause)

1852.215-84 Ombudsman (Oct 2003)

(a) An ombudsman has been appointed to hear and facilitate the resolution of concerns from offerors, potential offerors, and contractors during the pre-award and post-award phases of this acquisition. When requested, the ombudsman will maintain strict confidentiality as to the source of the concern. The existence of the ombudsman is not to diminish the authority of the contracting officer, the Source Evaluation Board, or the selection official. Further, the ombudsman does not participate in the evaluation of proposals, the source selection process, or the adjudication of formal contract disputes. Therefore, before consulting with an ombudsman, interested parties must first address their concerns, issues, disagreements, and/or recommendations to the contracting officer for resolution.

(b) If resolution cannot be made by the contracting officer, interested parties may contact the installation ombudsman, Lucy V. Kranz, 2101 NASA Parkway, Houston, Texas, 77058, 281-244-7683, facsimile 281-483-2200, email lucy.v.kranz@nasa.gov. Concerns, issues, disagreements, and recommendations which cannot be resolved at the installation may be referred to the NASA ombudsman, James A. Balinskas, the Director of the Contract Management Division, at 202-358-0445, facsimile 202-358-3083, e-mail james.a.balinskas@nasa.gov. Please do not contact the ombudsman to request copies of the solicitation, verify offer due date, or clarify technical requirements. Such inquiries shall be directed to the contracting officer or as specified elsewhere in this document.

(End of clause)

ALTERNATE I (JUNE 2000)

(c) If this is a task or delivery order contract, the ombudsman shall review complaints from contractors and ensure they are afforded a fair opportunity to be considered, consistent with the procedures of the contract.

(End of clause)

JSC TERMS AND CONDITIONS OF PURCHASE ORDER

1. RESTRICTION ON PARTIAL DELIVERIES

The Government reserves the right to reject partial delivery unless authorized elsewhere in this order or authorized in writing by the Contracting Officer. Unauthorized partial deliveries will be returned to the Contractor, transportation charges collect.

2. ITEM IDENTIFICATION

All individual items or packages must be marked with stock numbers and must be packed in the unit indicated. Any deviation may be rejected and returned to the vendor.

3. PACKING

The items shall be packed in substantial commercial containers of the type, kind, and size commonly used for the particular items, using suitable blocking, bracing, and cushioning to ensure damage-free delivery and content acceptance to the designated point by common or other carriers at the lowest rate of the carrier. If applicable, item shelf life will be clearly marked on the exterior of the container.

4. PACKAGING (Interior)

Unless otherwise specified herein, only identical items with the same part number shall be packaged as a unit. Protective measures shall be used to prevent damage from physical hazards during transportation and storage, by application of packages and wraps, cushioning, and complete identification marking of unit and intermediate containers. Each unit and intermediate container shall be clearly marked externally with identification data to include name, quantity, and item number.

5. PACKING LIST

A packing list or other suitable shipping document shall accompany each shipment. The packing list may be enclosed in the package or securely attached to the outside of the package in a sturdy, waterproof envelope. When more than one package is involved in a shipment, the package containing the packing list shall be identified with the words "CONTAINS PACKING LIST."

Packing lists shall include, but not be limited to, the following:

- Name and address of consignor

- Name and address of consignee.

- Applicable NASA Purchase or Delivery Order number.

- Description of the material shipped, including item number, quantity, number of containers, and package number, if any.

6. HAZARDOUS MATERIALS

A Material Safety Data Sheet (MSDS) must accompany any delivery of hazardous materials, one for each individual hazardous material item. This may be accomplished by enclosing each MSDS in the applicable package, or securely attaching it to the outside of the package in a sturdy, waterproof envelope.

7. DELIVERY INSTRUCTIONS

Deliveries must be made to the transportation receiving activity located in Building 421, NASA Lyndon B. Johnson Space Center, Houston Texas. Vendor deliveries will be accepted only during normal operating hours which are from 7:30 a.m. to 3:30 p.m. daily, except Saturdays, Sundays, and Federal Holidays. Any exceptions to normal delivery will be clearly defined by the NASA Contracting Officer.

8. FEDERAL, STATE, AND LOCAL TAXES

Except as may be otherwise provided in this contract, the contract price includes all applicable Federal, State, and local taxes and does not include any taxes from which the Government, the Contractor, or this transaction is exempt. Upon request of the contractor, the Government shall furnish a tax exemption certificate or similar evidence of exemption with respect to any such tax not included in the contract price pursuant to this clause. For the purpose of this clause, the term "date of this contract" means the date of the Contractor's quotation or, if no quotation, the date of this purchase order.

**ADDITIONAL TERMS AND CONDITIONS
(APPLIES TO PURCHASE ORDER WHEN CHECKED)**

☒ **FAR Clause 52.245-1 Government Property. (JUN 2007)**

☐ **MANNED SPACEFLIGHT ITEMS FOR USE IN MANNED SPACEFLIGHT:**

Materials, manufacturing, and workmanship of highest quality standards are essential to astronaut safety. If you are able to supply the desired items with a quality which is higher than that of the items specified or proposed, you are requested to bring this fact to the immediate attention of the purchaser. NASA FAR Supplement Clause 1852-246-73 is incorporated by reference.

☐ **CERTIFICATES OF COMPLIANCE:**

- ☐ 1. Items were actually produced by designated manufacturer.
- ☐ 2. Item conforms to manufacturer's current standards of performance and quality for items of
 - o the specified designation.
- ☐ 3. Manufacturer can furnish traceability records of documentation for lot control, configuration control, serialization, etc.

NOTICE: The Certificate of Compliance required by the Purchase Order must be triplicate, signed, and packed with Box #1 of the shipment.

☐ **NFS Clause 1852.247-73, BILLS OF LADING (JUNE 2002):** (Include if shipment is FOB Origin)

The purpose of this clause is to define when a commercial bill of lading or a government bill of lading is to be used when shipments of deliverable items under this contract are f.o.b. origin.

(a) Commercial Bills of Lading. All domestic shipments shall be made via commercial bills of lading (CBLs). The Contractor shall prepay domestic transportation charges. The Government shall reimburse the Contractor for these charges if they are added to the invoice as a separate line item supported by the paid freight receipts. If paid receipts in support of the invoice are not obtainable, a statement as described below must be completed, signed by an authorized company representative, and attached to the invoice. "I certify that the shipments identified below have been made, transportation charges have been paid by (company name), and paid freight or comparable receipts are not obtainable.

Contract or Order Number:

Destination: "

(b) Government Bills of Lading. (1) International (export) and domestic overseas shipments of items deliverable under this contract shall be made by Government bills of lading (GBLs). As used in this clause, "domestic overseas" means non-continental United States, i.e. Hawaii, Commonwealth of Puerto Rico, and possessions of the United States.

(2) At least 15 days before shipment, the Contractor shall request in writing GBLs from: N/A If time is limited, requests may be by telephone: N/A. Requests for GBLs shall include the following information.

- (i) Item identification/ description.
- (ii) Origin and destination.
- (iii) Individual and total weights.
- (iv) Dimensional Weight.
- (v) Dimensions and total cubic footage.
- (vi) Total number of pieces.
- (vii) Total dollar value.
- (viii) Other pertinent data.

(End of clause)

☐ **FAR Clause(s) checked below become a part of this order:**

- ☐ 52.222-4 Contract Work Hours and Safety Standards Act-Overtime Compensation (JULY 2005)
- ☐ 52.227-14 Rights in Data General as modified by NASA FAR clause 1852.227-14 (JUN 1987)
- ☒ 52.245-9 Use and Charges. (JUN 2007)
- ☐ 52.247-29 F.O.B. Origin (FEB 2006)
- ☐ 52-247-30 F.O.B. Origin, Contractor's Facility (FEB 2006)
- ☐ 52-247-31 F.O.B. Origin, Freight Allowed (FEB 2006)
- ☐ 52.247-32 F.O.B. Origin, Freight Prepaid (FEB 2006)
- ☒ 52-247-34 F.O.B. Destination (NOV 1991)
- ☐ 52.247-65 F.O.B. Origin, Prepaid Freight-Small Package Shipments (JAN 1991)
- ☐ 52-247-66 Returnable Cylinders (MAY 1994)

- ☒ 1852.245-74 Contractor Accountable On-Site Government Property. (MAR 1989)
 - ☒ 1852.245-75 Title to Equipment. (MAR 1989)
 - ☒ 1852.245-80 Use of Government Production and Research Property on a No-Charge Basis. (MAR 1989)
-